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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/583,445	05/30/2000	E. Barton Manchester	062891.0390	1676
7590		11/05/2004	EXAMINER	
Baker Botts LLP		PEYTON, TAMMARA R		
2001 Ross Avenue		ART UNIT		
Dallas, TX 75201-2980		PAPER NUMBER		
		2182		
DATE MAILED: 11/05/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/583,445

Applicant(s)

MANCHESTER, E. BARTON

Examiner

Tammara R Peyton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 29-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION***Election/Restrictions***

Newly submitted independent claims 29-31 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: these claims are for determining configuration data by determining whether the current configuration data should be reconfigured - classifiable in claim 711 subclass 152.

Claims 3 and 13, link(s) invention I (claims 1-28) and invention II (claims 29-31). The restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s), claim 3 and 13. Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

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Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 29-31 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8-13, 17-21 and 26-28 rejected under 35 U.S.C. 103(a) as being unpatentable over *Chieng et al.*, (US 6,035,346).

As per claim 1, 2, 11, 12, 18, 19, and 26-28, *Chieng* teaches a method for activating a card in a network element comprising one or more switch (adapter) cards, the method comprising:

communication a signal indicating a type of the card (obvious);

retrieving an executable file stored remotely (host processor) from the card and switch (adapter) cards based at least in part on the type of the card,;

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downloading the executable file to a memory (515/520, Fig. 5 or 810/815, Fig. 8) for a processor (510 or 805) on the card without requiring the use of boot code on the card; and operating the card using the executable file. (Abstract, col. 2, lines 47-col. 6, lines 1-20)

Chieng teaches a method of determining a type of card and retrieving an executable file stored on a remote memory (110, Fig.5) and downloading the executable file to the card's memory (515/520, Fig. 5 or 810/815, Fig. 8) without using boot code on the card because the card is put into a hold state during the download. *Chieng* does not expressly teach of the card being a switch card, however, one of ordinary skill would readily recognize that *Chieng* would have motivate to implement a host of other types of cards using *Chieng's* system because doing so would add and expand the flexibility of *Chieng* without departing from the inventive concept.

As per claim 3, 13, 20, and 21, *Chieng* teaches holding the processor while downloading the executable file and releasing the processor subsequent to the download.

As per claims 8-10, and 17, *Chieng* does not expressly teach a dedicated download card, however, one of ordinary skill would readily recognize that *Chieng's* host processor teaches retrieving and downloading the appropriate executable file based on the inserted card. Further, as for the card transmitting a present or reset

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message to host processor, *Chieng* teaches the processor recognizing an inserted card, therefore it would have been obvious to one of ordinary skill at the time the invention was made that the card would transmit a signal alerting the host processor to its present in the system.

Claims 4-7, 14-16, and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Chieng et al.*, (US 6,035,346) and *Berenbaum et al.*, (US 6,272,144)

As per claims 4-7, 14-16, and 22-25, *Chieng* does not expressly teach a card comprising a field-programmable gate array (FPGA). However, *Berenbaum* teaches a line card comprising a FPGA (*Berenbaum*, 104, Fig. 8) is well known in the art. Therefore, it would have been obvious to one of ordinary skill that it would not be out of the scope of *Chieng*'s card to implement a FPGA as described in *Berenbaum*, because doing so would control the transmission protocol of the line card. (*Berenbaum*, col. 7, lines 25-39)

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tammara Peyton whose telephone number is (571) 272-4157. The examiner can normally be reached between 6:30 - 4:00 from Monday to Thursday, (I am off every first Friday), and 6:30-3:00 every second Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Gaffin, can be reached on (571) 272-4156. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3718. Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-2100.

Mailed responses to this action should be sent to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231.

Faxes for Official/formal (After Final) communications or for informal or draft communications (please label "PROPOSED" or "DRAFT") sent to:

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(703) 872-9306

Hand-delivered responses should be brought to:

USTPO, 2011 South Clark Place, Customer Window

Crystal Plaza Two, Lobby Room 1B03, Arlington, VA, 22202 Crystal Park II, 2121.

A handwritten signature in black ink, appearing to read "Tammara Peyton", with a stylized flourish at the end.

Tammara Peyton

November 1, 2004